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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

Implementation of the Cable Television Consumer Protection and Competition Act of 1992	))))	PP Docket No. 93-21
Inquiry into Sports Programming Migration	)))	

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

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April 11, 1994

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COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

Time Warner Entertainment Company, L.P. ("Time Warner") respectfully submits its comments in response to the Further Notice in the above-captioned proceeding.[1]

I. THE FCC SHOULD NOT RECOMMEND LEGISLATION OR ADOPT SPORTS SIPHONING RULES

In our comments on the Commission's initial Sports Migration Notice Time Warner emphasized that the sports programming marketplace was characterized by: (1) frequent instances of abandonment of significant sports programming by broadcasters; (2) a pattern of "broadcaster-first" rights negotiations for major sports properties where only remaining unsold product is offered to cable; and (3) a deal-driven environment which changes with each major transaction and therefore defies accurate

[1] Further Notice of Inquiry in PP Docket No. 93-21, FCC 94-65 (rel. March 11, 1994) ("Further Notice").

prediction.[2] Events occurring in the year since those comments were filed have borne out these observations and underscored the lack of a need for further Commission or Congressional action in this area.

Recent sports programming deals have reinforced the continued preeminence of broadcasters in attracting highest marquee sports programming and the "broadcasters-first" pattern of major rights negotiations. Moreover, it should not be surprising given the fluidity of the sports programming marketplace, instances of "reverse migration" -- where broadcasters have reacquired programming they previously abandoned to cable -- recently have been occurring with increasing frequency.

Both the NFL-Fox deal and the joint venture between Major League Baseball, ABC and NBC demonstrate the unfettered ability of broadcasters to acquire rights to major sports programming they desire to air and the continued relegation of cable programmers to bidding on only those games/packages the broadcasters do not wish to carry. Moreover, the NFL-Fox deal heralds a 33% increase in the number of broadcast networks carrying major sports. Fox's emergence will not only likely result in increased competition among the networks for sporting events, but in an increase in instances of reverse migration.

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[2] See Comments of Time Warner Entertainment Company, L.P. filed on March 29, 1993 in response to Notice of Inquiry in PP Docket No. 93-21, FCC 93-77 (rel. February 9, 1993) at 10-14, 36-38 and 40-41 ("Time Warner Comments").

In fact, the NFL-Fox deal has already produced reverse migration. CBS did not react to losing its 39 year affiliation with the NFL by forsaking major sports. Instead, it purchased rights to televise SEC and Big East college football on a national basis. This resulted not only in movement to CBS of games previously shown on ABC, but also of games previously shown on cable.

Such "reverse migration" is now quite typical and occurring with increasing frequency:

- CBS not only took Big East football away from regional cable, it preemptively outbid ESPN for the rights to the early rounds of the NCAA men's basketball tournament.[3]

- The NFL Pro Bowl will, starting in 1995, be broadcast on ABC instead of on ESPN.

- NBC has recently announced that it alone will televise the 1996 Summer Olympics in the U.S., instead of taking on a cable partner, as was the case for the 1992 Summer Olympics.

- As a result of the joint venture deal announced by Major League Baseball, ABC and NBC, fewer MLB games will be carried on ESPN this season.

- The NHL switched its national telecasts from SportsChannel to ABC and ESPN to obtain network broadcast exposure, even though SportsChannel offered a financially more lucrative package.

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[3] ESPN originally obtained rights to the early round games of the NCAA men's basketball tournament only because the broadcast networks did not view those games as valuable commodities. ESPN's promotion of those games made them so popular that the networks became interested and CBS outbid ESPN when ESPN's original contract expired. This scenario may be repeated in the World Cup Soccer context where ABC, by choice, currently televises only 3 games, with the remaining 44 games appearing on ESPN.

Reverse migration and the recent NFL and MLB baseball deals belie the notion that there lurks in the distribution of sports programming a problem requiring an FCC or Congressional solution. The sports programming market is a dynamic one. None of the parties commenting on the Initial Notice in this docket predicted the two biggest market developments to occur in just the following year -- the $1.65 billion deal between the NFL and Fox, and the unique joint venture between ABC, NBC and Major League Baseball. The former deal adds another powerful player on the side of the broadcasters; the latter doubles the number of MLB post-season games telecast over-the-air from 21 to 42. Both deals demonstrate that increased migration is not an inexorable result of the extraordinary changes in both the sports and programming businesses.

II. SPORTS PROGRAMMING TRENDS

In our initial comments Time Warner stated that three sports programming trends could be discerned. The events of the past year have, we believe, reiterated the continued validity of the trends we predicted.[4] First, our view that the Super Bowl and World Series will remain on broadcast television indefinitely is buttressed by the new NFL and MLB deals. The NFL's package not only keeps the Super Bowl on broadcast television, it moves no additional games from broadcast to cable. The MLB package is even more pro-broadcast -- the World Series remains on over-the-

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[4] See Time Warner Comments at 46-48.

air television, as do all 42 post-season games. Thus <u>no</u> post-season professional football or baseball games will be shown on cable under the current deals.

Second, we stated that the current pattern of "broadcaster-first" rights negotiations would continue. The NFL, MLB and Olympics deals bear this out. Cable programmers were able to bid only on the NFL games that NBC, ABC and Fox did not take. The ABC/NBC deal with Major League Baseball is the first one involving a major sports property where the rights-holder does not receive any guaranteed payment. Yet, the broadcaster-first pattern is so ingrained that Major League Baseball agreed to this no-guarantee joint venture with ABC and NBC without even opening up the bidding to cable programmers. In the Summer Olympics context, the broadcasters continue to buy up <u>all</u> of the television rights and take on a cable partner only if they decide it is in their economic interest to do so.

Third, we forecast that rights-holders will market their product more aggressively and use different media to telecast the same event to different audiences. The groundbreaking nature of the NFL and MLB arrangements are a testament to the aggressiveness of the leagues in maximizing their revenue without migrating to cable. Moreover, the prospect of pay-per-view telecasts of "distant" NFL games is simply a manifestation of the fact that there is a demand for such games on the part of fans (and commercial establishments that cater to them) -- a demand that demographically-driven broadcasters and cable operators cannot economically satisfy. Indeed, pay-per-view carriage of such games is a positive development enabling the NFL to realize the full value of its product. At the same time, such carriage increases consumer welfare by increasing the number of games available for viewing <u>without</u> reducing the number of games available over-the-air.

III. Conclusion

Forty years ago the NBA, NFL, NHL and MLB together had 48 teams. Twenty years ago these leagues had 91 teams. Today, they together field a total of 109 teams. The explosion in the number of sports franchises is a result of seemingly insatiable demand and the economics of sports -- economics in which television rights sales play only a part. If the Commission decides to address this subject further, it should first examine the broader economics of sports -- including ticket prices and revenues, merchandising, stadium improvements and player compensation.

The increase in the number of professional sports teams has brought with it a geometric increase in the number of games available for telecast. There are simply not enough hours in the day for network schedules to digest the number of desirable telecasting opportunities that 109 teams produce. Consumer demand could not have been satisfied in the absence of cable sports programming.

Legislative or regulatory restrictions on the amount of sports programming permitted on cable would hurt sports leagues, teams and players by reducing the revenue stream which is the engine that has driven expansion to date and is necessary if further expansion is to take place. Moreover, such restrictions would, for no good reason, deprive the sporting public of access to the programming they crave. Therefore Time Warner respectfully urges the Commission not to adopt sports siphoning rules or recommend to Congress that it enact legislation regulating the amount or type of sports programming on cable television.

Respectfully submitted,

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